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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/782,804	02/13/2001	Motasim Sirhan	020460000940	9572
20350	7590	12/10/2004		EXAMINER
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834				PHAN, HIEU
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/782,804	SIRHAN ET AL. <i>AS</i>	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hieu Phan	3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
 THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 03 November 2004.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 38-50 and 54-59 is/are pending in the application.
  - 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 54 and 55 is/are allowed.
- 6) Claim(s) 38-50, 56-59 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.
 

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

***Withdrawal of Non-Finality of Last Office Action***

1. The Non-Final Office Action mailed on 10/29/2004 have been rescinded and the following office action is respond to the Amendment After Final Office Action, which was received on 03/11/2004

***Withdrawal of Finality of Last Office Action***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action, which was filed on 09/08/2003, is persuasive and, therefore, the finality of that action is withdrawn.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 38-41, 45-50 and 56-59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Harish et al. (U.S. Patent 6,506,437).

Harish et al. is explained as before. Harish et al. fail to disclose the rate which the therapeutic agents are release from the stent as claimed in claims 38-41 and 56.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the rate which the therapeutic agents are release

from the stent as claimed in claims 38-41 and 56, since it has been held that where the general conditions of claims are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

***Allowable Subject Matter***

4. Claim 54 and 55 are allowed.

***Response to Arguments***

5. Applicant's arguments filed 03/11/2004 have been fully considered but they are not persuasive. In regard to Applicant's agreements that Harish et al. reference fails to disclose or suggest a release rate of a therapeutic agent, Examiner disagrees. Harish et al. disclose in column 10 lines 65-67 and column 11 lines 1-9 a general release rate of substance or substances, for example methylprednisolone (column 7 line 6). Because Harish et al. disclose a general release rate, the rejection under 35 U.S.C. 103(a) in paragraph 3 is proper.

***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hieu Phan whose telephone number is 703-308-8969. The examiner can normally be reached on Monday-Friday from 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M McDermott can be reached on 703-308-2111. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0873.



Hieu Phan  
Examiner  
Art Unit 3738

  
C2  
CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700